



RESOLUTION

RELATING TO APPROVAL OF THE COMPLETION OF AN EXCHANGE OF LAND BETWEEN THE CITY AND COUNTY OF HONOLULU AND THE STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS AND A RELATED TRANSFER OF FUNDS.

WHEREAS, the Honolulu City Council ("City Council"), in Resolution 09-343, CD1, a copy of which is attached hereto as Exhibit A, authorized the Mayor or the Director of the Department of Transportation Services ("DTS"), or the Director's designee, on behalf of the City and County of Honolulu (the "City"), to enter into a Memorandum of Agreement ("MOA") with the State of Hawai'i, Department of Hawaiian Home Lands ("DHHL"), to sell or exchange parcels of land described as the 'Ewa Drum Site, Waipahu, Hawai'i (TMK Nos. 9-4-008-010 & 9-6-003-044) (the "'Ewa Drum Site"), for portions of the Varona Villages, 'Ewa, Hawai'i (TMK Nos. 9-1-182: 007 (por.) and :010 (por.)) (the "Varona Sites", and together with the 'Ewa Drum Site, the "Properties"); and

WHEREAS, Resolution 09-343, CD1 further provided that the City administration is to seek Council approval of the sale or exchange prior to consummation of the transactions; and

WHEREAS, on March 10, 2010, the City and DHHL entered into the MOA as authorized by Resolution 09-343, CD1; and

WHEREAS, in accordance with the MOA, the City Council adopted Resolution 13-137, CD1, a copy of which is attached hereto as Exhibit B, which authorized the Mayor or his designee to execute reciprocal licenses with DHHL, allowing the City to improve the 'Ewa Drum Site (to facilitate the development of the Rail Operations Center) and the DHHL to improve the Varona Sites (to facilitate the development of housing), and the City and DHHL executed such licenses on October 10, 2014; and

WHEREAS, to complete the land exchange in accordance with the MOA, the City and DHHL commissioned appraisals of the Properties, and on September 16, 2021, Paul Cool, CRE, MAI completed the appraisals of the Properties with a valuation date of June 25, 2008, which values were approved by the United States Department of Interior's Appraisal and Valuation Services Office on September 29, 2021; and

WHEREAS, the 'Ewa Drum Site was appraised at \$4,990,000 and the Varona Sites were appraised at \$4,660,000, concluding that the 'Ewa Drum Site is worth \$330,000 more than the Varona Sites; and



RESOLUTION

WHEREAS, the City Administration and DHHL propose an "Equalization Payment" from the City to DHHL in the amount of \$415,323, which represents the \$330,000 difference in appraised values with an adjustment based on the consumer price index from 2008 to 2021; and

WHEREAS, the parties wish to amend and restate the MOA (the "Amended MOA") to include the Equalization Payment and other terms; and

WHEREAS, the exchange of the Properties remains in the public interest as the City and DHHL have each constructed improvements on the Properties pursuant to their respective licenses, and the exchange will allow the City to operate the Rail Operations Center at the 'Ewa Drum Site and will allow DHHL to use the Varona Sites in furtherance of housing development; and

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990 ("ROH"), requires that any intergovernmental agreements or amendments to agreements concerning the Honolulu High Capacity Transit Corridor Project that place an obligation upon the City will require the prior consent and approval of the City Council; and

WHEREAS, the City Council approval of the final exchange of the Properties, including the Equalization Payment and additional terms, is further required by Resolution 09-343, CD1; and

WHEREAS, ROH Section 2-17.2(c)(2) requires that the City Council approve by resolution any transfer of funds between characters of expenditure within the same activity whenever the cumulative amount of transfers from or to a character of expenditure exceeds the lesser of (a) \$100,000, or (b) the greater of (i) 10 percent of the appropriation for either the originating or receiving character of expenditure, or (ii) \$10,000; and

WHEREAS, a transfer in fiscal year 2022 of \$415,323 in Transportation Fund ("BT") monies from the DTS Transportation Mobility Division, Rail Operations and Maintenance Branch's current expense ("CE") character of expenditure to its equipment ("E") character of expenditure is needed to fund the Equalization Payment; and

WHEREAS, a transfer in fiscal year 2022 of \$80,000 in BT monies from the DTS Transportation Mobility Division, Rail Operations and Maintenance Branch's CE character of expenditure to its E character of expenditure is needed to fund the appraisal, survey, and closing costs for the land exchange; now, therefore,



RESOLUTION

BE IT RESOLVED by the City Council that it approves the disposal of the Varona Sites via exchange of the Properties and the payment of the Equalization Payment; and

BE IT FURTHER RESOLVED that the disposal be in accordance with the recommendations of the Director of Budget and Fiscal Services, or the Director's designee, and with all applicable laws and City policies; and

BE IT FURTHER RESOLVED that the Mayor or the Director of Budget and Fiscal Services, or the Director's designee, shall be and is hereby authorized to sign the deeds and other documents necessary to complete the transfer of the Properties; and

BE IT FURTHER RESOLVED that the Mayor or the Director of Transportation Services, or the Director's designee, is hereby authorized to execute the Amended and Restated Memorandum of Agreement in substantially the same form attached hereto as Exhibit C; and

BE IT FURTHER RESOLVED that \$495,323 in Transportation Fund monies be transferred between the following characters of expenditure in Ordinance 21-20 to fund the Equalization Payment, the City's share of appraisal costs, survey costs, and other costs necessary to finalize the exchange:

From	To	Amount	Fund
Department of Transportation Services, Transportation Mobility Division, Rail Operations and Maintenance Branch (CE)	Department of Transportation Services, Transportation Mobility Division, Rail Operations and Maintenance Branch (E)	\$495,323	BT

BE IT FURTHER RESOLVED that the Mayor, or the Mayor's designee, is hereby authorized to carry out the provisions of this resolution; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 22-131

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Director of Transportation Services, the Director of Land Management, the Executive Director of the Honolulu Authority for Rapid Transportation, and the Director of Budget and Fiscal Services.

INTRODUCED BY:

Tony Watson (br)

DATE OF INTRODUCTION:

MAY 19 2022

Honolulu, Hawaii

Councilmembers

Exhibit A



RESOLUTION

AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII, RELATING TO THE SALE OR EXCHANGE OF PARCELS OF LANDS LOCATED IN WAIAWA AND KAPOLEI, OAHU, HAWAII.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, requires that any intergovernmental agreement or any amendments thereto which places an obligation upon the City or any department or agency thereof shall require prior City Council's consent and approval; and

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, also requires that, when carrying out the provisions of any intergovernmental agreement, all applications and/or other official communications which support the application and which are required to be provided by the City or its component departments to any other governmental or quasi-governmental agency shall first be presented to the City Council for its review and approval prior to their transmittal; and

WHEREAS, the Department of Hawaiian Home Lands, State of Hawaii ("DHHL") and the City Department of Transportation Services ("DTS") have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange; and

WHEREAS, DHHL is the fee owner of the Ewa Facility Drum site situated in Waiawa, Oahu, identified as Tax Map Key numbers (1) 9-4-08: 010 and (1) 9-6-03: 044; consisting of approximately 55.842 acres; and

WHEREAS, the City is the fee owner of certain properties, identified as a portion of Varona Villages, situated in Kapolei, Oahu, and further identified as first, a portion of Tax Map Key: (1) 9-1-17-69, which consists of approximately 33.253 acres, and second, a portion of Tax Map Key: (1) 9-1-17:075, which consists of approximately 18.808 acres ("City Property"); and

WHEREAS, DHHL and DTS wish to have DHHL and the City enter into an agreement to sell or exchange these parcels of land when the City receives the Record of Decision from the Federal Transit Administration ("FTA") for the Honolulu High-Capacity Transit Corridor Project, a FTA New Starts project; and

WHEREAS, DHHL and DTS desire that pending the sale or exchange of properties between DHHL and the City, the Parties grant each other the necessary



RESOLUTION

property interests in each other's property so that each may take possession of the other's property at the earliest possible moment; and

WHEREAS, such an arrangement would impose certain obligations on the City necessitating an intergovernmental agreement between the City and DHHL; now, therefore

BE IT RESOLVED by the Council of the City and County of Honolulu that the Mayor or the Director of DTS, or the Director's designee, is hereby authorized to execute a Memorandum of Agreement with DHHL in substantially the same form as the proposed Agreement attached hereto as Exhibit "A";

BE IT FURTHER RESOLVED that prior to the consummation of any sale or exchange between the parties of the aforesaid properties, the City administration shall seek City Council approval for any such sale or exchange in accordance with Chapter 37, Article 1, Revised Ordinances of Honolulu 1990, as amended, which governs the disposal of city real property by sale or exchange;



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 09-343, CD1

RESOLUTION

BE IT FINALLY RESOLVED that the clerk be and hereby is directed to transmit copies of this Resolution to the Mayor, City and County of Honolulu, and the Director of the Department of Transportation Services, Frank Fasi Municipal Building, 650 S. King Street, Honolulu, Hawaii.

INTRODUCED BY:

Todd Apo (br)

Councilmembers

DATE OF INTRODUCTION:

November 25, 2009

Honolulu, Hawaii

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) is entered into on this _____ of _____, 2009, by and between the Department of Hawaiian Home Lands, State of Hawaii ("DHHL") and the City and County of Honolulu, a municipal corporation of the State of Hawaii ("City").

PURPOSE

WHEREAS, DHHL and the City have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange; and

WHEREAS, DHHL and the City have agreed to sell or exchange these parcels of land when the City receives the Record of Decision from the Federal Transit Administration ("FTA") for the Honolulu High-Capacity Transit Corridor Project, a FTA New Starts project; and

WHEREAS, DHHL and the City have agreed that pending the sale or exchange of properties between DHHL and the City, the Parties shall grant each other the necessary property interests in each other's property so that each may take possession of the other's property at the earliest possible moment; and

WHEREAS, the purpose of this MOA is to guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange,

NOW THEREFORE, the Parties mutually acknowledge that the consideration for the execution hereof are their respective mutual covenants and their respective benefits inuring herefrom, and hereby agree to sell or exchange their respective properties according to the following terms, covenants, conditions, and provisions:

EXCHANGE or SALE PROPERTIES

DHHL is the fee owner of the Ewa Facility Drum site suitable for conveyance to the City by sale or exchange. The property is identified as Tax Map Key numbers (1) 9-4-08: 010 and (1) 9-6-03: 044; consisting of approximately 55.842 acres; described in detail in Exhibit A and made a part hereof ("DHHL Property").

The City is the fee owner of certain properties situated in Ewa, Oahu, suitable for conveyance to DHHL by sale or exchange. These properties consist of first, a portion of Tax Map Key: (1) 9-1-17-69, which consists of approximately 33.253 acres, and the second, a portion of Tax Map Key: (1) 9-1-17:075, which consists of approximately 18.808 acres, both of which are shown more fully on the map attached hereto as Exhibit B and made part hereof ("City Property").

AGREEMENT

1. Value of Sale/Exchange Properties. DHHL and the City agree that the value of the sale/exchange properties shall be based on appraisals of fair market values for the sale/exchange properties. The appraisals will be based on the "Uniform Standard of Professional Appraisal Practice" and/or the "Uniform Appraisal Standards for Federal Land Acquisitions."
2. Sale or Exchange of Properties.
 - a. Sale of Properties. In the event that the parties agree to the sale of the properties, DHHL and the City are obligated to the following:
 - (1) DHHL agrees to sell and convey to the City and the City agrees to purchase, the DHHL Property, subject to and in accordance with the terms and conditions set forth in a purchase and sale agreement, the form and content of which shall be mutually agreed upon by the parties for a sale by quitclaim deed on an "as is", "where is" basis.
 - (2) City agrees to sell and convey to DHHL and DHHL agrees to purchase, the City Property,

subject to and in accordance with the terms and conditions set forth in a purchase and sale agreement, the form and content of which shall be mutually agreed upon by the parties for a sale by quitclaim deed on an "as is", "where is" basis, and subject further that the City Property is properly subdivided for conveyance.

b. Exchange of Properties. In the event that the parties agree to the exchange of the properties, the parties shall execute a Land Exchange Agreement, the form and content of which shall be mutually agreed upon by the parties for an exchange on an "as is", "where is" basis. Furthermore, in the event of an exchange of properties, DHHL and the City are obligated to the following:

- (1) DHHL shall convey and the City shall accept title to the DHHL property by duly executed and acknowledged quitclaim deeds.
- (2) The City shall convey and DHHL shall accept title to the City property by duly executed and acknowledged quitclaim deeds, subject to the City Property being properly subdivided for conveyance.

3. Approval or Review of Governmental Authorities.

- a. In the event of a sale of the properties described herein, such sale shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission. In the event of an exchange of the properties described herein, such exchange shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission and the United States of America, acting by and through its Secretary of the Interior.
- b. This MOA, the sale or exchange and any license for the use of the properties described herein shall be subject to the approval of the City Council.

4. Right of Entry and License Agreement: The Parties recognize that each Party will need control and use of the other Party's property prior to the closing of the sale or exchange of the

subject properties ("Closing"). Upon the execution of this MOA, subject to any applicable governmental approvals, and prior to the effective date of the Closing:

- a. DHHL shall execute a License Agreement for the DHHL Property allowing the City and its agents to have access to the property and giving the City full rights of possession of the DHHL Property pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. The City shall be responsible for all claims, demands, liabilities, costs and expenses arising out of or in connection with DHHL's provision of the License Agreement to the City.
- b. The City shall execute a License Agreement for the City property allowing the DHHL and its agents to have access to the property and giving the DHHL full rights of possession pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. DHHL shall be responsible for all claims, demands, liabilities, costs and expenses arising out of or in connection with the City's provision of the License Agreement to DHHL.
- c. During the period from the execution of this MOA to the Closing, neither Party shall allow liens or other encumbrances to attach to any part of the other Party's Property.
- d. In the event the City Council, the Hawaiian Homes Commission or the United States Secretary of the Interior, as applicable, disapproves this MOA, any License Agreements shall terminate immediately; provided, however, that the City shall be allowed on the DHHL property to remove any improvements made thereon by the City and DHHL shall be allowed access to the City property to remove any improvements made thereon by DHHL. Each Party shall be solely responsible for the cost and expense for the removal of improvements.

5. Environmental Analyses and Assessments.
 - a. The Parties will comply with an environmental analysis and related studies as required by the National Environmental Policy Act (NEPA) for their respective properties. In the event of an exchange of properties, the environmental analyses shall be reviewed by the United States Department of the Interior.
 - b. Both Parties will comply with a Phase 1 Environmental Site Assessment report for their respective property and in the event of an exchange of properties such assessments shall be subject to review by the United States Department of the Interior.
 - c. Both Parties will comply with environmental assessments for their respective properties as required under Chapter 343, Hawaii Revised Statutes.
6. Inspection. The Parties' representatives are authorized to enter upon the Sale/Exchange Properties for the purpose of completing due diligence inspections, including environmental audits, and for any other purpose required or permitted by this MOA.
7. Warranties. Except as otherwise provided in this MOA, the Parties agree to accept the Sale/Exchange Properties "as is" and "where is". Neither party has made any warranties, express nor implied, concerning the condition of the Sale/Exchange Properties (other than title, as provided herein) or their fitness for any intended use.
8. Encumbrances. The Parties agree not to sell, convey, or further encumber the Sale/Exchange Properties prior to Closing. Each Party shall convey its Sale/Exchange Property by means of a quitclaim deed free of any mortgages, liens, or other encumbrances.
9. Closing and Related Costs. All closing costs incurred at the time of the Closing shall be shared equally between the parties. Closing shall occur upon the recordation in the Bureau of Conveyances and filing in the Land Court of the State of Hawaii, as applicable, of both DHHL's deed for the DHHL

Property and the City's deed to DHHL for the City Property. The Parties shall coordinate their efforts to ensure that the deeds are simultaneously submitted for recordation and filing.

10. Construction. The Parties have contributed equally to the drafting of this document, which shall not be construed in favor of either. This MOA shall be construed in accordance with the laws of the State of Hawaii.
11. Term. This MOA shall be in force and effect until the land exchange or sale has been completed to the mutual satisfaction of the Parties.
12. Modification. This MOA may be modified by written consent of both Parties to cover any questions that may arise subsequent to the date of this MOA. The MOA may be renewed for an additional term upon written consent of both Parties.
13. Authority. The Parties hereto represent and warrant that this MOA and all instruments, documents and agreements to be executed in connection herewith are or when delivered will be duly authorized, executed and delivered by the Parties hereto and will be valid, binding and enforceable obligations of the parties charged. Each individual executing this MOA on behalf of DHHL or the City represents and warrants to each other that he or she is duly authorized to do so.
14. Legal Descriptions. The Parties acknowledge that legal descriptions suitable for conveyance of title may not be available for all properties identified in Exhibits A and B. Prior to conveyance of any properties identified in Exhibits A and B, in consultation with the other party, each Party shall prepare a legal description, suitable for recordation, for each property.
15. Termination. This MOA will terminate when all conveyances have been completed and approved in writing by both Parties.
16. Assignment. No transfer or assignment of this MOA, or any part thereof or interest therein, directly or indirectly, voluntarily

or involuntarily, shall be made unless such transfer or assignment is first approved in writing by both Parties.

17. Dispute Resolution. The Parties agree to employ a process of negotiation, mediation, or other means of Alternative Dispute Resolution other than binding arbitration to resolve any disagreements that may arise under this MOA, provided however, that each party reserves the right to litigate any dispute that remains unresolved after good faith attempts at Alternative Dispute Resolution.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day and year first written above.

DEPARTMENT OF HAWAIIAN HOME LANDS

By _____
Kaulana H.R. Park
Chairperson of the Hawaiian Homes Commission

CITY AND COUNTY OF HONOLULU

By _____
Mufi Hannemann
Mayor

APPROVED AS TO FORM AND LEGALITY

By _____
Deputy Attorney General
State of Hawaii

APPROVED AS TO FORM AND LEGALITY

By _____
Deputy Corporation Counsel
City and County of Honolulu

EXHIBIT A

<u>Properties</u>	<u>Acres</u>	<u>Location</u>	<u>TMK</u>
Ewa Drum Facility	56	Waiawa, Oahu	

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.

EXHIBIT B

Varona Village	53	Kapolei, Oahu	(1) 9-1-017:069
			(1) 9-1-017:075

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

RESOLUTION 09-343, CD1

Introduced: 11/25/09 By: TODD APO (BR)

Committee: BUDGET

Title: RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII, RELATING TO THE SALE OR EXCHANGE OF PARCELS OF LANDS LOCATED IN WAIAWA AND KAPOLEI, OAHU, HAWAII.

Links: RES09 343
RES09-343, CD1
CR-391

BUDGET	12/02/09	CR-391 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.							
COUNCIL	12/16/09	CR-391 AND RESOLUTION 09-343, CD1 ADOPTED.							
ANDERSON	Y	APO	Y	CACHOLA	A	DELA CRUZ	Y	DJOU	A
GARCIA	Y	KOBAYASHI	A	OKINO	Y	TAM	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


BERNICE K. N. MAU, CITY CLERK

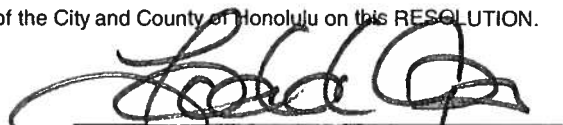

TODD K. APO, CHAIR AND PRESIDING OFFICER

Exhibit B



RESOLUTION

AUTHORIZING THE EXECUTION OF LICENSE AGREEMENTS BETWEEN THE CITY AND COUNTY OF HONOLULU (CITY) AND THE DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII (DHHL) IN FURTHERANCE OF THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND DHHL PREVIOUSLY AUTHORIZED BY THE COUNCIL BY RESOLUTION NO. 09-343, CD1, AND RELATING TO THE SALE OR EXCHANGE OF PARCELS OF LAND LOCATED IN WAIAWA AND KAPOLEI, OAHU, HAWAII.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, provides that any intergovernmental agreement or any amendments thereto which places an obligation upon the City or any department or agency thereof shall require prior consent and approval of the City Council; and

WHEREAS, pursuant to Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, the City Council adopted Resolution 09-343, CD1 on December 16, 2009, authorizing the execution of a Memorandum of Agreement (MOA) between the City and DHHL relating to the sale or exchange of parcels of land located in Waiawa and Kapolei, Oahu, Hawaii; and

WHEREAS, the MOA was executed effective March 10, 2010, by and between the City and DHHL; and

WHEREAS, the MOA provides that the City and DHHL shall execute license agreements with one another to allow each party to control and use the others' property prior to the closing of the sale or exchange of the subject parcels of land; and

WHEREAS, the MOA further provides that any license for the use of the properties described therein shall be subject to the approval of the City Council; and

WHEREAS, the City and DHHL are each prepared to execute the license agreements attached hereto as Exhibit "A" and Exhibit "B" in furtherance of the agreements of the parties set forth in the MOA; and

WHEREAS, while it is the Council's understanding that the proposed license agreement attached to this Resolution as Exhibit "A" is not intended by the MOA to operate as a lease, if it is so construed, the Council does approve of the proposed agreement pursuant to Revised Ordinances of Honolulu Section 28-3.1(10) and Section 28-4.1, and which Council further understands is not subject to bidding requirements under Revised Ordinances of Honolulu Section 28-3.1(10) since the subject parcels will be used by the DHHL, a subdivision of the State of Hawaii; and



RESOLUTION

WHEREAS, the MOA provided for the sale or exchange of the subject parcels of land pursuant to the execution of a land sale or exchange agreement, and it is the Council's understanding that the City and DHHL will work to execute the land sale or exchange agreement as expeditiously as possible; and

WHEREAS, when considering the specific use of the parcels subject to the City's agreement with DHHL, attached as Exhibit "A," DHHL will work with neighboring landowners and resident communities to keep them informed of DHHL's potential use of the parcels; and

WHEREAS, when considering the specific use of the parcel subject to the City's agreement with DHHL, attached as Exhibit "B," the City will work with neighboring landowners and resident communities to keep them informed of its potential use of the parcel; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Council consent to and approve proposed license agreements attached hereto as Exhibit "A" and Exhibit "B" and by reference made a part of this Resolution; and

BE IT FURTHER RESOLVED that the Mayor or his designee is hereby authorized to:

1. Execute the License Agreement with the State Department of Hawaiian Home Lands in substantially the same form as the agreement attached hereto as Exhibit "A";
2. Execute any incidental or related agreements and documents in furtherance of the above License Agreement;
3. Execute the License Agreement with the State Department of Hawaiian Home Lands in substantially the same form as the agreement attached hereto as Exhibit "B"; and
4. Execute any incidental or related agreements and documents in furtherance of the above License Agreement;

and

BE IT FURTHER RESOLVED that the City administration provide the Council with a written report by December 1st of each year, providing an update of the progress



RESOLUTION

made to execute a land sale or exchange agreement between the City and DHHL and the expected date the administration expects to submit the agreement for approval by the Council; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, the Managing Director, the Director of the Department of Budget and Fiscal Services, the Director of the Department of Facility Maintenance, and the Chairperson of the Hawaiian Homes Commission, Department of Hawaiian Home Lands, State of Hawaii.

INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

June 18, 2013
Honolulu, Hawaii

Councilmembers

LICENSE AGREEMENT

THIS RIGHT OF ENTRY AND LICENSE AGREEMENT ("License Agreement"), made and issued this _____ day of _____, 20____, by and between the CITY AND COUNTY OF HONOLULU, DEPARTMENT OF FACILITY MAINTENANCE, whose post office address is 1000 Ulu`ohia Street, Suite 215, Kapolei, Hawaii 96707, hereinafter referred to as the "LICENSOR," and the STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter referred to as the "LICENSEE." LICENSOR and LICENSEE are hereafter collectively referred to as the "Parties" and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

W I T N E S S E T H :

WHEREAS, LICENSOR and LICENSEE have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange;

WHEREAS, LICENSOR is the fee owner of certain properties, identified as a portion of Varona Villages, situate at Kapolei, Oahu, and further identified as first, ~~a portion of~~ Tax Map Key No. (1) 9-1-¹¹² 017:~~069~~, which consists of approximately ^{31.858}~~23.253~~ acres, and second, ~~a~~

✓ ~~portion of~~ Tax Map Key No. (1) 9-1-017:¹⁰¹~~075~~, which consists of approximately 18.808 acres;

WHEREAS, LICENSEE is the fee owner of Hawaiian home lands known as the Ewa Drum site situate at Waiawa, Ewa, Oahu, identified as Tax Map Key Nos. (1) 9-4-08:010 and (1) 9-6-03:044, consisting of
✓ approximately 55.8⁸⁴²~~76~~ acres;

WHEREAS, LICENSOR and LICENSEE have executed a Memorandum of Agreement dated March 10, 2010 (MOA), that will guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange;

WHEREAS, the Parties have agreed to make continuous, good-faith, and diligent efforts towards finalizing the sale or exchange described in the MOA as soon as possible;

WHEREAS, LICENSOR and LICENSEE desire that pending the sale or exchange of properties between LICENSOR and LICENSEE, the Parties grant each other the necessary authorizations so that each may take possession of the other's property at the earliest possible moment;

WHEREAS, LICENSEE desires to have access to and use the City-owned property situate at Kapolei, Oahu for purposes described herein; and

WHEREAS, the areas that will be used by LICENSEE are shown in yellow on the map marked as Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the "subject property";

NOW, THEREFORE, in consideration of the covenants of LICENSEE, as hereinafter contained, LICENSOR does hereby grant to LICENSEE this License to enter upon, have access to and use the subject property as

provided below, and LICENSEE does hereby covenant with LICENSOR as follows:

1. Term. The term of this License Agreement is for seventy-five (75) years, with the effective date of _____ or until such time as LICENSEE obtains fee simple title to the subject property, whichever occurs sooner, unless this License Agreement is sooner terminated as hereinafter provided.

2. License Fee. The license fee for the term of this License Agreement shall be the nominal sum of One Dollar (\$1.00).

3. Use. LICENSEE shall use the subject property for the development of housing for sale or rental in the City and County of Honolulu, as provided in section 6-46.3(e), Revised Ordinances of Honolulu, which use includes homesteading, residential housing, and other uses that would be allowed on Hawaiian Home Lands under the Hawaiian Homes Commission Act of 1920 ("HHCA"); in addition to other uses that may be approved by LICENSOR, provided that such approval shall not be unreasonably withheld.

4. Utilities. LICENSEE shall pay, when due, all charges and other outgoings of every nature and kind whatsoever, including all charges for utility services, which shall during the term of this License Agreement be lawfully charged, assessed, imposed, or become due and payable upon or on account of the subject property and any improvements hereafter permitted to be erected thereon.

5. Maintenance and Repair. During the term of this License Agreement, LICENSEE shall at its own expense repair and maintain any facility such as water, plumbing, piping, and electrical wiring in or

on the subject property; shall keep the subject property and all such facilities thereon in a strictly clean and sanitary condition and shall comply with all laws, ordinances, rules and regulations of the Federal, State, and County governments that are applicable to the subject property and any such facilities; and shall allow LICENSOR or its agents, at all reasonable times, free access to the subject property for the purpose of examining the same or determining whether the conditions herein are being fully observed and performed, and shall make good, or commence to make good, at its own cost and expense all repairs or maintenance within sixty (60) days after the mailing of written notice by registered or certified mail to the last known address of LICENSEE.

6. Right and Approval of Construction. LICENSOR grants to LICENSEE the right to construct, operate and maintain all improvements deemed appropriate by the Hawaiian Homes Commission on, within, under, over, and across the subject property, provided all plans and specifications for building meet all Federal, State and County requirements and standards.

7. Construction Standards. Any new construction must be in full compliance with all laws, ordinances, rules and regulations of the Federal, State and County governments.

8. Ownership/Right to Remove Improvements. All buildings or structures or other major improvements of whatever kind that LICENSEE constructs or erects on the subject property shall remain the property of LICENSEE during the term of the License Agreement. LICENSEE shall have the right, prior to the termination of this License Agreement, or

within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the subject property; provided that in the event LICENSEE shall fail to so remove such property within one hundred eighty (180) days after written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE. Upon request by LICENSEE, LICENSOR shall diligently support LICENSEE'S efforts to remedy and remove the causes of delay in the removal of LICENSEE's property, provided that LICENSOR shall not be required to expend any funds in the effort. All insurance and condemnation proceeds pertaining to improvements on the subject property shall be the sole property of LICENSEE.

9. Waste/Unlawful Use. LICENSEE shall not do or commit or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the subject property, any nuisance, or any unlawful or improper use of the subject property.

10. Non-Discrimination. LICENSEE shall not use the subject property, nor permit the property to be used in support of any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex or a physical handicap.

11. Default of Licensee. It is expressly agreed that this License Agreement is contingent upon the continuing condition that if LICENSEE after a thirty (30) day demand, fails to observe or perform substantially the provisions contained herein, and if LICENSEE does

not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days after delivery by LICENSOR of a written notice of such failure by personal service or by certified mail to LICENSEE; or if the LICENSEE becomes bankrupt, insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking readjustment, rearrangement, postponement, composition or reduction of LICENSEE'S debts, liabilities or obligations; then in any such event LICENSOR may at its option cancel this License Agreement and thereupon take immediate possession of the subject property, after the passage of a reasonable amount of time for any right of action which LICENSOR may have. LICENSEE shall have the right, prior to any cancellation of this License Agreement, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the subject property; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

12. Assignment. Except as expressly provided in this License Agreement, this License Agreement is not transferable. At no time during the term of this License Agreement shall LICENSEE assign, mortgage or pledge its interest in this License Agreement in the subject property or its interest in the improvements hereinafter erected on the subject property without the prior written consent of LICENSOR, which consent will not be withheld unreasonably.

13. Sublicense. LICENSEE may sublicense all or a portion of the subject property to a qualified developer or tenants of housing projects developed pursuant to the HHCA, or for other uses authorized under the HHCA. Any developer, tenants of housing projects, public utility or other sublicensee shall include LICENSOR as an additional insured on all liability insurance policies required by LICENSEE in connection with any development, housing project, public utility or other use. All plans and specifications for any such development, housing project, public utility or other use shall be in compliance with all Federal, State and County requirements and standards, provided that nothing contained in this License Agreement shall be interpreted to impose additional City and County of Honolulu requirements on the development of State highways or other State infrastructure projects.

14. Insurance. LICENSEE is a self-insured State agency and shall not be required to maintain insurance.

15. Indemnity. LICENSEE shall release, defend, indemnify, and hold harmless the City and County of Honolulu, LICENSOR, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of LICENSEE or LICENSEE's employees, officers, agents, contractors, lessees, sublicensees or assigns under this License Agreement.

16. Hazardous Materials. LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials on the

subject property. LICENSEE shall not allow the storage or use of such materials on the subject property in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the subject property any such materials except to use in the ordinary course of LICENSEE'S business, and then only after written notice is given to the LICENSOR of the identity of such materials and upon LICENSOR'S consent, which consent may be withheld at the LICENSOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then LICENSEE shall be responsible for the costs thereof. In addition, LICENSEE shall execute affidavits, representations and the like from time to time at LICENSOR'S request concerning LICENSEE'S best knowledge and belief regarding the presence of hazardous materials on the subject property placed or released by LICENSEE.

LICENSEE shall agree to indemnify and hold harmless LICENSOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from any use or release of hazardous materials on the subject property occurring while LICENSEE is in possession, or elsewhere, if caused by LICENSEE or persons acting under LICENSEE. These covenants shall survive the expiration or earlier termination of this License Agreement.

For the purpose of this License Agreement, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future Federal, State or County statute, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Clean Water Act, as amended, and also including but not limited to petroleum, petroleum-based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by Federal, State or County regulations, now or in the future, as presenting a risk to human health or the environment.

Prior to the termination of this License Agreement, LICENSEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health and LICENSOR.

17. Surrender. Upon the expiration of this License Agreement, or its sooner termination as herein provided, LICENSEE shall peaceably and quietly leave, surrender and deliver to LICENSOR possession of the subject property. Without limiting LICENSEE'S rights to insurance and condemnation proceeds, LICENSEE shall have the option to surrender this License Agreement where the portion damaged through no fault of LICENSEE or taken renders the remainder unsuitable for the use for which the subject property was licensed. LICENSEE shall have the

right, prior to the expiration, surrender or sooner termination of this License Agreement, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the subject property; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

18. Costs of Litigation. In case either Party shall, without any fault on its part, be made a party to any litigation commenced by or against the other (other than condemnation proceedings), the Party at fault shall pay all costs, including reasonable attorneys' fees and expenses incurred by or imposed on the other. The prevailing Party in any dispute between the Parties shall be entitled to recover its attorneys' fees.

19. Abandonment. In the event this License Agreement shall be abandoned or shall remain unused for the purpose granted for a continuous period of one year, all rights granted hereunder shall terminate, and LICENSEE will remove its facilities, equipment and any approved improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of such facilities and any approved improvements, if any, LICENSOR hereby consenting and agreeing to such removal. Failure of LICENSEE to remove its facilities, equipment and any approved improvements and/or to restore the land within 180 days after notification to do same from LICENSOR by certified mail at LICENSEE'S last known address, will constitute a breach and LICENSOR

may remove LICENSEE'S facilities, equipment and any approved improvements and/or restore the land to a condition similar to that existing immediately prior to the time of installation or construction of such facilities and approved improvements and LICENSEE will reimburse LICENSOR for all reasonable costs in connection with the removal and/or restoration.

20. Definition of Subject Property. The term "subject property" when it appears herein includes and shall be deemed to include the portions of the City-owned lands described above and shown on said Exhibit A, and all facilities, buildings and improvements erected or placed thereon.

21. Miscellaneous.

a. Consents. Whenever under the terms of this License Agreement the consent or approval of either Party shall be required, such consent or approval shall not be unreasonably or arbitrarily withheld. If the Party receiving any request or consent or approval shall fail to act upon such request within sixty-five (65) days after receipt of written request therefor, such consent or approval shall be presumed to have been given.

b. Bind and Inure. This License Agreement shall be binding upon and inure to the benefit of LICENSOR and LICENSEE and their respective successors and assigns.

- c. Applicable Law; Severability. This License Agreement shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License Agreement is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.
- d. Paragraph Headings. The headings of paragraphs in this License Agreement are inserted only for convenience and shall in no way define, describe or limit the scope or intent or any provision of this License Agreement.
- e. Licensee Accepts Subject Property "as is", "where is". LICENSEE accepts the subject property "as is," "where is", without any warranties or representations of any kind by LICENSOR, expressed or implied, as to the condition, merchantability or state of repair of the subject property or fitness of the subject property for any particular purpose.
- f. Counterparts. The Parties hereto agree that this License Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. In making proof of this License Agreement, it shall not be

necessary to produce or account for more than one such counterpart. For all purposes, including, without limitation, recordation and delivery of this License Agreement, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands on the day and year first above written.

APPROVED AS TO CONTENTS:

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF FACILITY MAINTENANCE

Director
Department of Budget and Fiscal
Services

By _____
Its Director and Chief Engineer

LICENSOR

Executive Director and CEO
HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION

APPROVED AS TO FORM
AND LEGALITY:

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

Deputy Corporation Counsel

By _____
Jobie M.K. Masagatani, Chairman Designate
Hawaiian Homes Commission

LICENSEE

Approved by the HHC at its meeting
held on October 20, 2009

APPROVED AS TO FORM

Deputy Attorney General
State of Hawaii

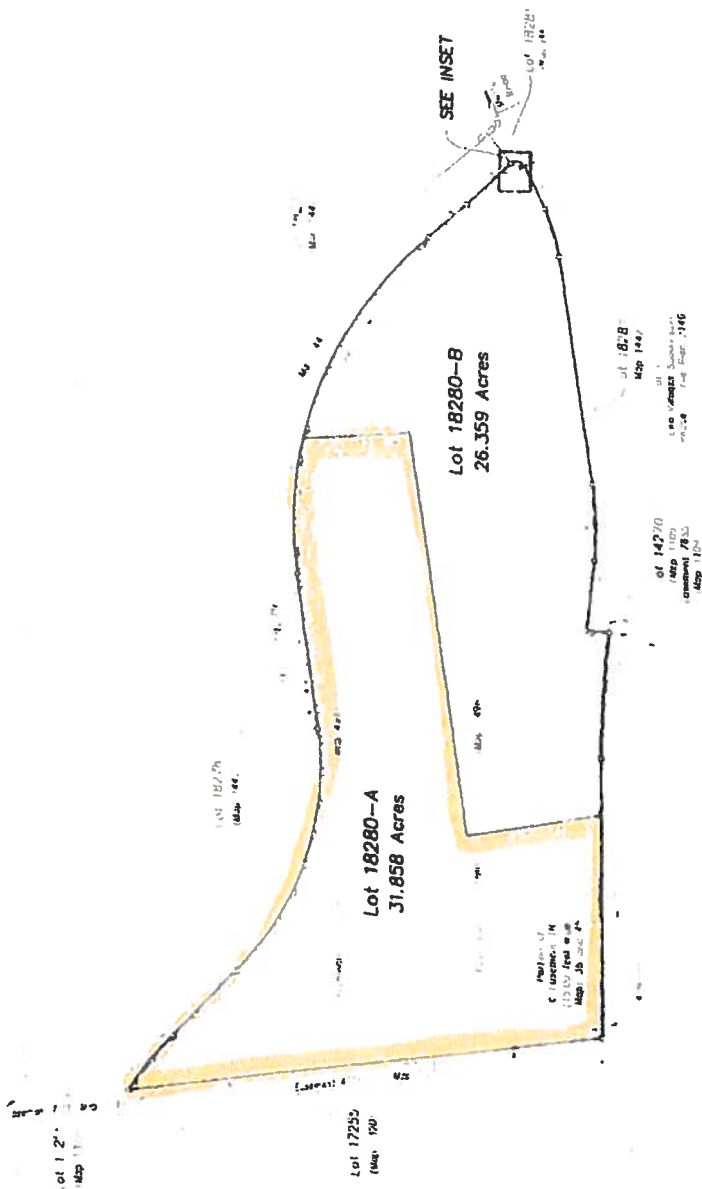
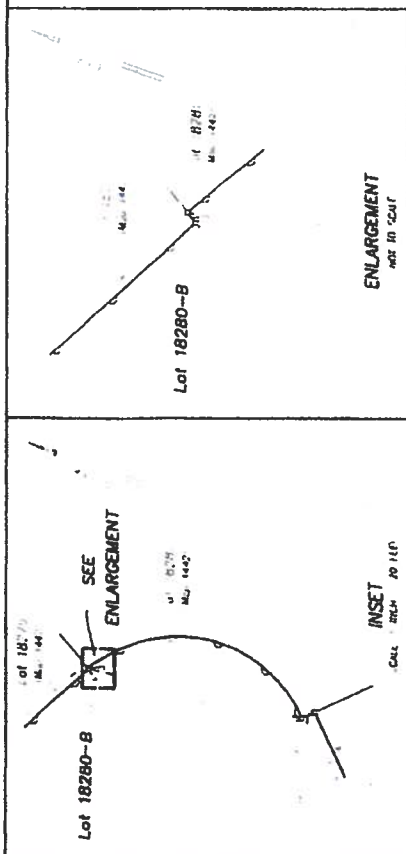
EXHIBIT A

MAP 1537

LAND COURT
STATE OF HAWAII
LAND COURT APPLICATION 1069

SUBDIVISION OF LOT 18280
 AS SHOWN ON MAP 1442
 INTO LOTS 18280-A AND 18280-B
 AND DESIGNATION OF
 RESTRICTION OF VEHICULAR ACCESS RIGHTS
 AFFECTING LOTS 18280-A AND 18280-B

AT HONOLULU, EWA, OAHU, HAWAII



R. M. IOWE CORPORATION
 1000 Kalia Road
 Honolulu, Hawaii 96813
 Licensed Professional Land Surveyor
 Certificate Number 12749
 Limit License Certificate Number 31

OWNER: CITY AND COUNTY OF HONOLULU
 TRANSFER CERTIFICATE # TITLE 455,921

AUTHORIZED AND APPROVED BY ORDER OF THE COURT
 IN THE AND OUR HANDS
 AUGUST 11, 2011

Handwritten signature: Patricia K. Kamae
 REGISTRAR OF THE LAND COURT

Note

Indicates No Vehicular Access

Filed July 8, 2011 Patricia Kamae Registrar of Land Court, Clerk

EXHIBIT A

Page 1 of 2

After Recordation Return By: Mail () Pickup () To:

Affects Tax Map Key: First Division, 9-4-008:010 & 9-6-003:044

LICENSE NO. 753

between

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
as Licensor

and
THE CITY AND COUNTY OF
HONOLULU
as Licensee

EXHIBIT "B"

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

LICENSE NO. 753

THIS LICENSE AGREEMENT ("License") made and issued this ____ day of _____, 20__, by and between the State of Hawaii by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LICENSOR," and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose place of business and mailing address is 530 South King Street, Honolulu, Hawaii 96813, hereinafter called "LICENSEE." LICENSOR and LICENSEE are hereafter collectively referred to as the "Parties" and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

WITNESSETH:

WHEREAS, LICENSOR and LICENSEE have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange;

WHEREAS, LICENSOR is the fee simple owner of Hawaiian home lands known as the Ewa Drum site situate at Waiawa, Ewa, Oahu, identified as Tax Map Key Nos. (1) 9-4-08:010 and (1) 9-6-03:044, consisting of approximately 55.⁸⁴²~~878~~ acres;

WHEREAS, LICENSEE is the owner of certain properties, identified as a portion of Varona Villages, situate at Kapolei, Oahu, and further

✓ identified as first, ~~a portion of~~ Tax Map Key No. (1) 9-1-017:¹¹²~~069~~,
✓ which consists of approximately ^{31.158}~~33.253~~ acres, and second, ~~a portion of~~
✓ Tax Map Key No. (1) 9-1-017:¹⁰¹~~073~~, which consists of approximately
18.808 acres;

WHEREAS, LICENSOR and LICENSEE have executed a Memorandum of Agreement dated March 10, 2010 ("MOA"), that shall guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange;

WHEREAS, the Parties have agreed to make continuous, good-faith, and diligent efforts towards finalizing the sale or exchange described in the MOA as soon as possible;

WHEREAS, LICENSOR and LICENSEE desire that pending the sale or exchange of properties between LICENSOR and LICENSEE, the Parties shall grant each other the necessary authorizations so that each may take possession of the other's property at the earliest possible moment;

WHEREAS, under Section 207(c)(1)(A) of the Hawaiian Homes Commission Act, 1920, as amended, and Section 10-4-22 of the Administrative Rules of the Department of Hawaiian Home Lands, as amended, LICENSOR is authorized to grant licenses for access to and use of Hawaiian home lands for public purposes;

WHEREAS, LICENSEE has requested a license to enter upon and use the Ewa Drum site for a maintenance and storage facility and guideway in connection with the Honolulu Rail Transit Project, formerly known as the Honolulu High-Capacity Transit Corridor Project, hereinafter referred to as the "Project"; and

WHEREAS, LICENSEE provides public transportation and related services to LICENSOR'S beneficiaries;

NOW THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR hereby grants to LICENSEE this License to enter upon, have access to and use the parcels of Hawaiian home lands shown on the map marked as Exhibit "A" and more particularly described in Exhibit "B," both of which exhibits are attached hereto and incorporated herein, and further identified by Tax Map Key Nos. (1)9-4-008:010 and (1)9-6-003:044, containing a total land area of 55.⁸⁴²~~876~~ acres, more or less, hereinafter referred to as the "premises" and situate at Waiawa, Ewa, Oahu, Hawaii.

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid rights and privileges are as follows:

1. Term. The term of this License is for seventy-five (75) years, with the effective date of _____, or until such time as LICENSEE obtains fee simple title to the premises, whichever occurs sooner, unless this License is sooner terminated as hereinafter provided.

2. License Fee. The license fee for the term of this License, shall be the nominal sum of One Dollar (\$1.00).

3. Use. LICENSEE may use the premises for a construction staging area, a maintenance and storage facility ("MSF"), and a guideway in connection with Project purposes; in addition to other uses permitted under Section 207 of the HHCA and approved by LICENSOR, provided that such approvals shall not be unreasonably withheld.

LICENSEE is authorized to sublicense the premises to the Honolulu Authority for Rapid Transportation, a semi-autonomous agency of the City and County of Honolulu, to develop and operate the aforementioned Project.

4. Utilities. LICENSEE shall pay, when due, all charges, and other outgoings of every nature and kind whatsoever, including all charges for utility services, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon or on account of the premises and the improvements hereafter erected thereon.

5. Maintenance and Repair. During the term of this License, LICENSEE shall at its expense repair and maintain any facility including water, gas, plumbing, piping, electrical wiring, and glass and any improvement installed or constructed by LICENSEE in or on the premises; shall keep the premises and all improvements thereon in a strictly clean and sanitary condition and shall comply with all laws, ordinances, rules and regulations of the Federal, State, or County governments that are applicable to the premises and improvements; and shall allow LICENSOR or its agents, at all reasonable times, free access to the premises for the purpose of examining the same or determining whether the conditions herein are being fully observed and performed, and shall make good, or commence to make good, at its own cost and expense all repairs or maintenance within sixty (60) days after the mailing of written notice by registered or certified mail to the last known address of LICENSEE.

6. Right and Approval of Construction. LICENSOR grants to LICENSEE the right to construct, operate and maintain the MSF and guideway on, within, under, over, and across the premises provided all plans and specifications for building meet all Federal, State and County requirements and standards.

7. Construction Standards. Any new construction must be in full compliance with all laws, ordinances, rules and regulations of the Federal, State and County governments.

8. Ownership/Right to Remove Improvements. All buildings or structures or other major improvements of whatever kind that LICENSEE constructs or erects on the premises shall remain the property of LICENSEE during the term of the License. LICENSEE shall have the right, prior to the termination of this License, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the premises; provided that in the event LICENSEE shall fail to so remove such property within one hundred eighty (180) days after written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE. Upon request by LICENSEE, LICENSOR shall diligently support LICENSEE'S efforts to remedy and remove the causes of delay in the removal of LICENSEE'S property, provided that LICENSOR shall not be required to expend any funds in the effort. All insurance and condemnation proceeds pertaining to improvements on the premises shall be the sole property of LICENSEE.

9. Waste: Unlawful Use. LICENSEE shall not do or commit or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the premises, any nuisance, or any unlawful or improper use of the premises.

10. Non-Discrimination. LICENSEE shall not use the premises, nor permit the premises to be used in support of any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex or a physical handicap.

11. Default of Licensee. It is expressly agreed that this License is contingent upon the continuing condition that if LICENSEE after a thirty (30) day demand, fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days after delivery by LICENSOR of a written notice of such failure by personal service or by certified mail to LICENSEE; or if LICENSEE becomes bankrupt, insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking readjustment, rearrangement, postponement, composition or reduction of LICENSEE'S debts, liabilities or obligations; then in any such event LICENSOR may at its option cancel this License and thereupon take immediate possession of the premises, after the passage of a reasonable amount of time for any right of action which LICENSOR may have. LICENSEE shall have the

right, prior to any cancellation of this License, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the premises; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

12. Assignment. Except as expressly provided in this License, this License is not transferable. At no time during the term of the License, shall LICENSEE assign, mortgage or pledge its interest in this License or its interest in the improvements hereafter erected on the premises without the prior written consent of LICENSOR, which consent will not be withheld unreasonably.

13. Insurance. LICENSEE is self-insured and shall not be required to maintain separate insurance.

14. Indemnity. LICENSEE shall release, defend, indemnify, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of LICENSEE or LICENSEE's employees, officers, agents, contractors, sublicensees, or assigns under this License.

15. Hazardous Materials. LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials on the premises. LICENSEE shall not allow the storage or use of such materials on the premises in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and

use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE'S business, and then only after written notice is given to the LICENSOR of the identity of such materials and upon LICENSOR'S consent, which consent may be withheld at the LICENSOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then LICENSEE shall be responsible for the costs thereof. In addition, LICENSEE shall execute affidavits, representations and the like from time to time at LICENSOR'S request concerning LICENSEE'S best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE.

LICENSEE shall agree to indemnify and hold harmless LICENSOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from any use or release of hazardous materials on the Premises occurring while LICENSEE is in possession, or elsewhere, if caused by LICENSEE or persons acting under LICENSEE. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future Federal, State or County statute, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and

Liability Act, as amended, and the Clean Water Act, as amended, and also including but not limited to petroleum, petroleum-based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by Federal, State or County regulations, now or in the future, as presenting a risk to human health or the environment.

Prior to the termination of this License, LICENSEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health and LICENSOR.

16. Surrender. Upon the expiration of this License, or its sooner termination as herein provided, LICENSEE shall peaceably and quietly leave, surrender and deliver to LICENSOR possession of the premises. Without limiting LICENSEE'S rights to insurance and condemnation proceeds, LICENSEE shall have the option to surrender this License where the portion damaged through no fault of LICENSEE or taken renders the remainder unsuitable for the use or uses for which the premises were licensed. LICENSEE shall have the right, prior to the expiration, surrender or sooner termination of this License, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the premises; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

17. Native Hawaiian Rights. LICENSOR warrants that it has made a good faith effort to determine whether native Hawaiian traditional and customary rights have been exercised on the property and has found no evidence of such exercise.

18. Costs of Litigation. In case either Party shall, without any fault on its part, be made a party to any litigation commenced by or against the other (other than condemnation proceedings), the Party at fault shall pay all costs, including reasonable attorneys' fees and expenses incurred by or imposed on the other. The prevailing Party in any dispute between the Parties shall be entitled to recover its attorneys' fees.

19. Abandonment. In the event this License shall be abandoned or shall remain unused for the purpose granted for a continuous period of one year, all rights granted hereunder shall terminate, and LICENSEE will remove its facilities, equipment and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements, if any, LICENSOR hereby consenting and agreeing to such removal. Failure of LICENSEE to remove its facilities, equipment and improvements and/or to restore the land within 180 days after notification to do same from LICENSOR by certified mail at LICENSEE'S last known address, will constitute a breach and LICENSOR may remove LICENSEE'S facilities, equipment and improvements and/or restore the land to a condition similar to that existing immediately prior to the time of installation or construction of its improvements

and LICENSEE will reimburse LICENSOR for all reasonable costs in connection with the removal and/or restoration.

20. Definition of Premises. The word "premises" when it appears herein includes and shall be deemed to include LICENSOR'S lands described above and all facilities, buildings and improvements wherever erected or placed thereon.

21. Miscellaneous.

- a. Consents. Whenever under the terms of this License the consent or approval of either Party shall be required, such consent or approval shall not be unreasonably or arbitrarily withheld. If the Party receiving any request or consent or approval shall fail to act upon such request within sixty-five (65) days after receipt of written request therefor, such consent or approval shall be presumed to have been given.
- b. Bind and Inure. This License shall be binding upon and inure to the benefit of LICENSOR and LICENSEE and their respective successors and assigns.
- c. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

- d. Paragraph Headings. The headings of paragraphs in this License are inserted only for convenience and shall in no way define, describe or limit the scope or intent or any provision of this License.
- e. Licensee Accepts Premises "as is", "where is".
LICENSEE accepts the premises "as is," "where is", without any warranties or representations of any kind by LICENSOR, expressed or implied, as to the condition, merchantability or state of repair of the premises or fitness of the premises for any particular purpose.
- f. Counterparts. The Parties hereto agree that this License may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. In making proof of this License, it shall not be necessary to produce or account for more than one such counterpart. For all purposes, including, without limitation, recordation and delivery of this License, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Parties hereto have caused these presents
to be duly executed the day and year first above written.

Approved by the HHC
at its meeting held on
October 20, 2009

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

By _____
Its Chairman Designate
Hawaiian Homes Commission

Deputy Attorney General
State of Hawaii

LICENSOR

APPROVED AS TO
FORM AND LEGALITY:

CITY AND COUNTY OF HONOLULU

Deputy Corporation Counsel

By _____
Its

LICENSEE

APPROVED AS TO CONTENTS:

Executive Director and CEO
Honolulu Authority for
Rapid Transportation

STATE OF HAWAII)
CITY & COUNTY OF HONOLULU) SS.
)

On this _____ day of _____, ____, before me appeared JOBIE M.K. MASAGATANI, to me personally known, who, being by me duly sworn, did say that she is the chairman Designate of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.

Notary Public, State of Hawaii

Printed Name: _____
My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: _____

Doc. Date: _____ or ☐ Undated at time of
notarization.

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

STATE OF HAWAII)
CITY & COUNTY OF HONOLULU) SS.
)

On this _____ day of _____, __, before me
appeared _____, to me personally known, who,
being by me duly sworn, did say that he is the _____ of the
City & County of Honolulu and the person who executed the foregoing
instrument and acknowledged to me that he executed the same freely and
voluntarily for the use and purposes therein set forth.

Notary Public, State of Hawaii

Printed Name: _____
My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: _____

Doc. Date: _____ or ☐ Undated at time of
notarization.

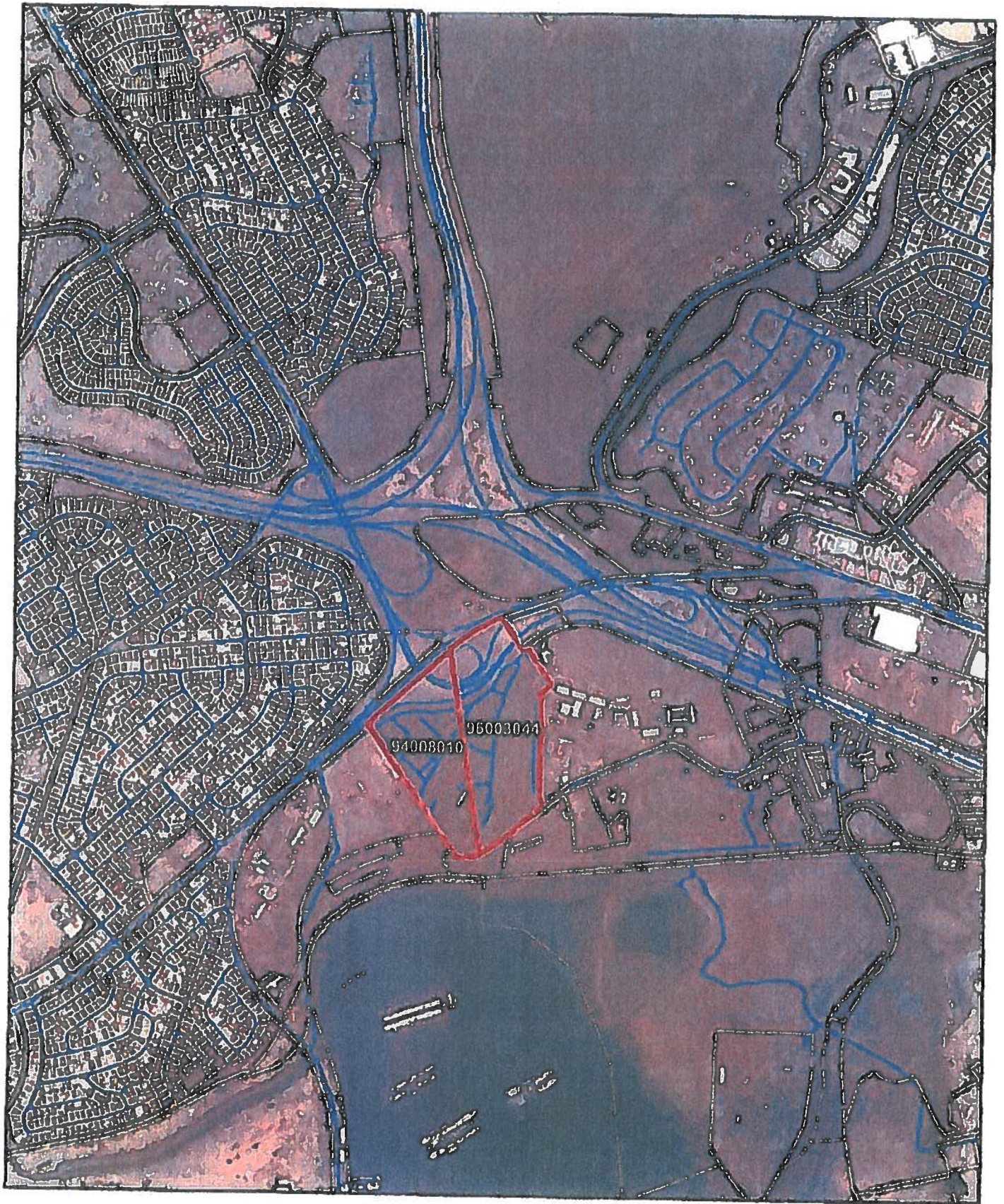
No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

EXHIBIT A



Ewa Drum Site - Navy Drum Site

EXHIBIT B

EWA DRUM SITE – NAVY DRUM SITE

<u>Properties</u>	<u>Acres</u>	<u>Location</u>	<u>TMKs</u>
Ewa Drum Facility	55.842	Waiawa, Oahu	9-4-08:010, 9-6-03:044

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 13-137, CD1

Introduced: 06/18/13 By: ERNEST MARTIN (BR)

Committee: INTERGOVERNMENTAL
AFFAIRS AND HUMAN
SERVICES


Title: RESOLUTION AUTHORIZING THE EXECUTION OF LICENSE AGREEMENTS BETWEEN THE CITY AND COUNTY OF HONOLULU (CITY) AND THE DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII (DHHL) IN FURTHERANCE OF THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND DHHL PREVIOUSLY AUTHORIZED BY THE COUNCIL BY RESOLUTION NO. 09-343, CD1, AND RELATING TO THE SALE OR EXCHANGE OF PARCELS OF LAND LOCATED IN WAIAWA AND KAPOLEI, OAHU, HAWAII.

Links: RES13-137
RES13-137, CD1
CR-236

Voting Legend: Y= Aye, Y* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

INTERGOVERNMENTAL AFFAIRS AND HUMAN SERVICES	07/18/13	CR-236 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN <u>CD1</u> FORM.							
COUNCIL	08/07/13	CR-236 AND RESOLUTION 13-137, CD1 WERE ADOPTED.							
ANDERSON	Y	CHANG	Y	FUKUNAGA	Y	HARIMOTO	Y	KOBAYASHI	Y
MANAHAN	Y	MARTIN	Y	MENOR	Y	PINE	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


BERNICE K. N. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER

Exhibit C

AMENDED AND RESTATED MEMORANDUM OF AGREEMENT

This Amended and Restated Memorandum of Agreement ("Amended and Restated MOA") is entered into on this _____ of _____, 2022, by and between the Department of Hawaiian Home Lands, State of Hawai'i ("DHHL") and the City and County of Honolulu, a municipal corporation of the State of Hawai'i ("City").

PURPOSE

WHEREAS, DHHL and the City ("Parties") have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawai'i, through either mutual fee simple sale or an equal- value exchange; and

WHEREAS, the Parties have agreed to sell or exchange these parcels of land when the City receives the Record of Decision from the Federal Transit Administration ("FTA") for the Honolulu High-Capacity Transit Corridor Project, a FTA New Starts project; and

WHEREAS, the Parties have agreed that pending the sale or exchange of properties between the Parties, the Parties shall grant each other the necessary property interests in each other's property so that each may take possession of the other's property at the earliest possible moment; and

WHEREAS, the purpose of this Amended and Restated MOA is to guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange,

WHEREAS, the Parties entered into that certain Memorandum of Agreement dated March 3, 2010 and wish to amend and restate the agreement in its entirety in this Amended and Restated MOA.

NOW THEREFORE, the Parties mutually acknowledge that the consideration for the execution hereof are their respective mutual covenants and their respective benefits inuring herefrom, and hereby agree to sell or exchange their respective properties according to the following terms, covenants, conditions, and provisions:

EXCHANGE or SALE PROPERTIES

DHHL is the fee owner of the Ewa Facility Drum site, which is suitable for conveyance to the City by sale or exchange. The property is identified as Tax Map Key numbers (1) 9-4-008: 010 and (1) 9-6-003: 044; collectively consisting of approximately 55.842 acres; described in detail in Exhibit A and made a part hereof ("DHHL Property").

The City is the fee owner of certain properties situated in Ewa, O'ahu, which is suitable for conveyance to DHHL by sale or exchange. These properties consist of first, a portion of Tax Map Key: (1) 9-1-182:010, which consists of approximately 31.8580 acres, and the second, a portion of Tax Map Key: (1) 9-1-182:007, which consists of approximately 18.808 acres, both of which are shown more fully on the map attached hereto as Exhibit B and made part hereof ("City Property"). The DHHL Property and the City Property are referred to as the "Exchange Properties."

The Ewa Facility Drum site was one of several federal properties that DHHL acquired pursuant to the Hawaiian Home Lands Recovery Act of 1995 ("HHLRA"), P.L. 104-42. The HHLRA represents the settlement for compensation to DHHL for past use by the federal government of DHHL's lands. Section 203(3) of the HHLRA authorizes the Chairman of the Hawaiian Homes Commission to sell lands designated as compensation for "lost use" of Hawaiian Home Lands. The term "lost use" is defined in the HHLRA, Section 202(7) as the value of the use of the land during the period when the Hawaiian Homes Commission was unable to use the lands because of the use of such lands by the federal government after August 21, 1959. DHHL's independent appraisers valued the "lost use" compensation as \$20,000,000 as of 1998.

Section 203(c)(3) of the HHLRA grants the Chairman of the Hawaiian Homes Commission ("Chairman") with the authority to designate lands to be sold at the time that lands are conveyed to DHHL as compensation for lost use under the HHLRA. The Chairman is authorized to sell such lands under the terms and conditions that are in the best interest of the beneficiaries. The proceeds of such a sale may only be used for purposes described in section 207(a) of the Hawaiian Homes Commission Act, 1920, as amended ("HHCA").

On May 23, 2006, the Hawaiian Homes Commission approved and authorized the Chairman to carry out the necessary actions to complete a land exchange with the City to exchange the DHHL Property for the City Property. At the time, necessary actions

to complete the exchange included: finalization and execution of exchange agreements, completion of appraisals for the exchange properties, determination of additional consideration that may be required to ensure a value-for-value transaction, preparation of an information package to be submitted to the United States Department of Interior, subdivision of the Varona Village site identified in Exhibit B, and recording the exchange deed following approval by the United States Secretary of the Interior.

On June 29, 2009, in accordance with the HHLRA, the federal government conveyed the Ewa Facility Drum site to DHHL on June 29, 2009. On July 7, 2009, the Hawaiian Homes Commission authorized the Chairman to grant his approval to designate the Ewa Facility Drum site to be sold to the City and authorized sale proceeds to be deposited in the Hawaiian Homes Trust Fund to be used for purposes described in section 207(a) of the HHCA. In addition, in a letter dated August 19, 2009, the Chairman of the Hawaiian Homes Commission notified the Secretary of the United States Department of the Interior that he designated the Ewa Drum site for sale as authorized under the HHLRA.

On September 16, 2021, the assigned appraiser, Paul Cool, CRE, MAI completed the appraisals of both properties with a valuation date of June 25, 2008. These values were approved by the United States Department of Interior's Appraisal and Valuation Services Office ("AVSO") on September 29, 2021. The DHHL Property was appraised at \$4,990,000 and the City Property was appraised at \$4,660,000; thus, the appraisals concluded that the DHHL Property is worth \$330,000 more than the City Property.

DHHL has been supportive of Honolulu's High-Capacity Transit Corridor Project because it will provide mass transit services to over 500 acres of Hawaiian home lands in Kapolei with significant homestead (900 existing and 1,000 planned housing units), community, and commercial developments within the larger Kapolei region. The City's planned use for the Ewa Facility Drum site is for a transit corporation yard is an essential element for the Honolulu rail transit system.

AGREEMENT

1. Value of Exchange Properties. The Parties agree that the value of the Exchange Properties shall be based on appraisals of fair market values for the Exchange Properties. The appraisals will be based on the "Uniform Standard of Professional Appraisal Practice"

and/or the "Uniform Appraisal Standards for Federal Land Acquisitions." Both Parties and the United States Department of the Interior agreed to use the process set forth in the Appraisal and Valuation Services Office Manual under which the AVSO would administer the valuation process.

2. Sale or Exchange of Exchange Properties.

a. Sale of Properties. In the event that the Parties agree to the sale of the Exchange Properties, the Parties are obligated to the following:

- (1) DHHL agrees to sell and convey to the City and the City agrees to purchase, the DHHL Property, subject to and in accordance with the terms and conditions set forth in a purchase and sale agreement, the form and content of which shall be mutually agreed upon by the Parties for a sale by quitclaim deed on an "as is", "where is" basis.
- (2) City agrees to sell and convey to DHHL and DHHL agrees to purchase, the City Property, subject to and in accordance with the terms and conditions set forth in a purchase and sale agreement, the form and content of which shall be mutually agreed upon by the Parties for a sale by quitclaim deed on an "as is", "where is" basis, and subject further that the City Property is properly subdivided for conveyance.

b. Exchange of Properties. In the event that the Parties agree to the exchange of the Exchange Properties, the Parties shall execute a Land Exchange Agreement, the form and content of which shall be mutually agreed upon by the Parties for an exchange on an "as is", "where is" basis. Furthermore, in the event of an exchange of the Exchange Properties, the Parties are obligated to the following:

- (1) DHHL shall convey and the City shall accept title to the DHHL Property by duly executed and acknowledged quitclaim deeds.
- (2) The City shall convey and DHHL shall accept title to the City Property by duly executed and acknowledged quitclaim deeds, subject to the City

Property being properly subdivided for conveyance.

- (3) In addition to the exchange of the Exchange Properties described above, the City shall make a payment to DHHL equal to the difference in the appraised values ("Equalization Payment").
- (4) Equalization Payment. The Equalization Payment shall be \$415,323, which represents the \$330,000 difference in appraised values with an adjustment based on the consumer price index since 2008.

This Amended and Restated MOA shall constitute the Land Exchange Agreement referenced in this section.

3. Approval or Review of Governmental Authorities.

- a. In the event of a sale of the properties described herein, such sale shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission. In the event of an exchange of the properties described herein, such exchange shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission and the United States of America, acting by and through its Secretary of the Interior.
- b. This Amended and Restated MOA, the disposal by sale or exchange, and any license for the use of the properties described herein shall be subject to the approval of the City Council.

4. Right of Entry and License Agreement. The Parties recognize that each Party will need control and use of the other Party's property prior to the closing of the sale or exchange of the subject properties ("Closing"). Upon the execution of this Amended and Restated MOA, subject to any applicable governmental approvals, and prior to the effective date of the Closing:

- a. DHHL shall execute a License Agreement for the DHHL Property allowing the City and its agents to have access to the property and giving the City full rights of possession of the DHHL Property pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. The City shall be responsible for all claims, demands,

liabilities, costs, and expenses arising out of or in connection with DHHL's provision of the License Agreement to the City.

- b. The City shall execute a License Agreement for the City Property allowing the DHHL and its agents to have access to the property and giving DHHL full rights of possession pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. DHHL shall be responsible for all claims, demands, liabilities, costs, and expenses arising out of or in connection with the City's provision of the License Agreement to DHHL.
- c. During the period from the execution of this Amended and Restated MOA to the Closing, neither Party shall allow liens or other encumbrances to attach to any part of the other Party's property.
- d. In the event the City Council, the Hawaiian Homes Commission or the United States Secretary of the Interior, as applicable, disapproves this Amended and Restated MOA, any License Agreements shall terminate immediately; provided, however, that the City shall be allowed on the DHHL Property to remove any improvements made thereon by the City and DHHL shall be allowed access to the City Property to remove any improvements made thereon by DHHL. Each Party shall be solely responsible for the cost and expense for the removal of improvements.

5. Environmental Analyses and Assessments.

- a. The Parties will comply with an environmental analysis and related studies as required by the National Environmental Policy Act ("NEPA") for their respective properties. In the event of an exchange of properties, the environmental analyses shall be reviewed by the United States Department of the Interior.
- b. Both Parties will comply with a Phase 1 Environmental Site Assessment report for their respective property and in the event of an exchange of properties such assessments shall be subject to review by the United States Department of the Interior.

- c. A Phase 1 Environmental Site Assessment for the DHHL Property dated June 2005 was prepared by the U.S. Department of Defense, Department of the U.S. Navy. A Phase 1 Environmental Site Assessment for the City Property dated May 16, 2014 was prepared by Kimura International. The Parties understand the approval of the United States Department of the Interior will require approval of these reports.
 - d. Both Parties will comply with environmental assessments for their respective properties as required under Chapter 343, Hawaii Revised Statutes.
- 6. Inspection. The Parties' representatives are authorized to enter upon the Sale/Exchange Properties for the purpose of completing due diligence inspections, including environmental audits, and for any other purpose required or permitted by this Amended and Restated MOA.
- 7. Warranties. Except as otherwise provided in this Amended and Restated MOA, the Parties agree to accept the Sale/Exchange Properties "as is" and "where is". Neither Party has made any warranties, express nor implied, concerning the condition of the Sale/Exchange Properties (other than title, as provided herein) or their fitness for any intended use. The Parties agree that each property will be conveyed by way of quitclaim deeds.
- 8. Encumbrances.
 - a. The Parties agree not to sell, convey, or further encumber the Sale/Exchange Properties prior to Closing. Each Party shall convey its Sale/Exchange Property by means of a quitclaim deed free of any mortgages, liens, or other encumbrances.
 - b. The Parties agree that the quitclaim deed shall be free of any mortgages, liens, or other encumbrances other than those identified on the two status reports from Title Guaranty of Hawaii, LLC dated November 25, 2019 for the DHHL Property and the two status reports from Title Guaranty of Hawaii, LLC dated November 27, 2019 for the City Property.
- 9. Closing and Related Costs. All Closing costs incurred at the time of the Closing, including without limitation, escrow fees, recording fees, and conveyance taxes shall be

shared equally between the Parties. Each party shall be responsible for their own title insurance costs, if any. There shall be no prorations as of the Closing date. Closing shall occur upon the recordation in the Bureau of Conveyances and filing in the Land Court of the State of Hawai'i, as applicable, of both DHHL's deed for the DHHL Property and the City's deed to DHHL for the City Property. The Parties shall coordinate their efforts to ensure that the deeds are simultaneously submitted for recordation and filing.

10. Escrow. Upon submission of the exchange proposal package to the United States Department of the Interior and receipt of tentative approval, the Parties shall open escrow with Title Guaranty of Hawaii, LLC ("Escrow Agent").
11. Closing Date. The Closing Date shall be mutually agreed upon by the Parties, but shall be no later than thirty (30) days after the last approval is obtained. The Party obtaining the last approval shall promptly notify the other Party and the Escrow Agent of such approval.
12. Closing Documents. The Parties shall submit to Escrow Agent the following documents:
 - a. Three original counterparts of the quitclaim deed executed and notarized;
 - b. Conveyance tax certificate;
 - c. Closing statement;
 - d. A deposit of the Equalization Payment (City only); and
 - e. All other documents necessary to consummate the Closing contemplated by this Amended and Restated MOA.
13. Closing by Escrow Agent. Upon notification by the Parties of the Closing date and confirmation that the approvals have been obtained, Escrow Agent shall arrange for the following:
 - a. Recordation and filing of the two quitclaim deeds in the Bureau of Conveyances of the State of Hawai'i and the Land Court of the State of Hawaii;
 - b. Issuance of the respective title policies to the Parties as applicable;

- c. Payment to DHHL of the sum of \$415,323; and
 - d. Delivery of a confirmed copy (showing all recording information thereon) of the two quitclaim deeds to each Party.
14. Construction. The Parties have contributed equally to the drafting of this document, which shall not be construed in favor of either. This Amended and Restated MOA shall be construed in accordance with the laws of the State of Hawai'i.
 15. Term. This Amended and Restated MOA shall be in force and effect until the land exchange or sale has been completed to the mutual satisfaction of the Parties.
 16. Modification. This Amended and Restated MOA may be modified by written consent of both Parties to cover any questions that may arise subsequent to the date of this Amended and Restated MOA. The Amended and Restated MOA may be renewed for an additional term upon written consent of both Parties.
 17. Authority. The Parties hereto represent and warrant that this Amended and Restated MOA and all instruments, documents, and agreements to be executed in connection herewith are or when delivered will be duly authorized, executed and delivered by the Parties hereto and will be valid, binding, and enforceable obligations of the Parties charged. Each individual executing this Amended and Restated MOA on behalf of DHHL or the City represents and warrants to each other that he or she is duly authorized to do so.
 18. Legal Descriptions. The Parties acknowledge that legal descriptions suitable for conveyance of title may not be available for all properties identified in Exhibits A and B. Prior to conveyance of any properties identified in Exhibits A and B, in consultation with the other Party, each Party shall prepare a legal description, suitable for recordation, for each property.
 19. Termination. This Amended and Restated MOA will terminate upon closing by Escrow Agent as set forth in paragraph 13 herein.

20. Assignment. No transfer or assignment of this Amended and Restated MOA, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by both Parties.
21. Dispute Resolution. The Parties agree to employ a process of negotiation, mediation, or other means of Alternative Dispute Resolution other than binding arbitration to resolve any disagreements that may arise under this Amended and Restated MOA, provided however, that each party reserves the right to litigate any dispute that remains unresolved after good faith attempts at Alternative Dispute Resolution.
22. Counterparts. This Amended and Restated MOA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together shall constitute one and the same instrument. This Amended and Restated MOA may be executed and delivered by the exchange of facsimile, .pdf or other electronic image file copies of the executed counterpart signature pages, which shall be considered the equivalent of ink signature pages for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated MOA as of the day and year first written above.

DEPARTMENT OF HAWAIIAN HOME LANDS

By _____
WILLIAM J. AILA, JR.
Chairperson
Hawaiian Homes Commission

CITY AND COUNTY OF HONOLULU

By _____
RICK BLANGIARDI
Mayor

APPROVED AS TO FORM AND LEGALITY

By _____
Deputy Attorney General
State of Hawai'i

APPROVED AS TO FORM AND LEGALITY

By _____
Deputy Corporation Counsel
City and County of Honolulu

EXHIBIT A

<u>Properties</u>	<u>Acres</u>	<u>Location</u>	<u>TMK</u>
Ewa Drum Facility	56	Waiawa, Oahu	

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.

EXHIBIT B

Varona Village	53	Kapolei, Oahu	(1) 9-1-0182:010
			(1) 9-1-0182:007

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 22-131

Introduced: 05/19/22 By: TOMMY WATERS - BY REQUEST Committee: BUDGET (BUD)

Title: RELATING TO APPROVAL OF THE COMPLETION OF AN EXCHANGE OF LAND BETWEEN THE CITY AND COUNTY OF HONOLULU AND THE STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS AND A RELATED TRANSFER OF FUNDS.

Voting Legend: * = Aye w/Reservations

05/19/22	INTRO	Introduced.
05/25/22	BUD	Reported out for adoption.
		CR-147
		4 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY
		2 EXCUSED: TSUNEYOSHI, TUPOLA
06/01/22	CCL	Committee report and Resolution were adopted.
		9 AYES: CORDERO, ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI, TULBA, TUPOLA, WATERS

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


GLEN I. TAKAHASHI, CITY CLERK


TOMMY WATERS, CHAIR AND PRESIDING OFFICER